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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,486	08/22/2003	John Charles DeBraal	6528	8735

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EXAMINER

MUSSER, BARBARA J

ART UNIT PAPER NUMBER

1733

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

CU

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/645,486	<b>Applicant(s)</b> DEBRAAL, JOHN CHARLES	
	<b>Examiner</b> Barbara J. Musser	<b>Art Unit</b> 1733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-14.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The foam being compressible would require further search and/or consideration.

### ATTACHMENT

Regarding applicant's argument as to a pre-set gap, laminating rollers have a pre-set gap between them. A pre-set gap is not the same as a fixed gap. A pre-set gap means that the gap between them has been pre-set or pre-determined. Even if for the sake of argument biased rollers move toward one another, one has to set a pre-determined space or gap between the rollers. Since applicant's claim does not require the gap to be fixed, nor does it require the gap width does not change during lamination, this limitation fails to further define over the prior art. Applicant's own specification appears to indicate the rollers are biased.[0031] Applicant's arguments appear to contradict the specification, which indicates the rollers are biased or held at the desired separation by devices that allow the rollers to move, which is contrary to applicant's argument that appear to suggest a fixed gap.

Regarding applicant's argument as Dontula, Andersson, and the admitted prior art, applicant has misconstrued what admitted prior art is being used. Examiner is not suggesting that because applicant cited Van Handel, it is admitted prior art. It is prior art because it has a priority date prior to the date at which applicant's claims are fully supported. Rather, examiner is using applicant's statement in the specification that the skilled artisan would be able to readily ascertain the appropriate gap setting[0044] as admitted prior art.

Regarding applicant's argument that examiner is misconstruing applicant's invention as having a rigid foam, examiner was not indicating that the foam of the applicant was a rigid foam.

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In response to applicant's argument that applicant cools the rollers to retain the caliper rather than solidify the adhesive, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Regarding applicant's argument that Dontula increases the caliper, the foam appears to be preformed prior to passing through the nip. Therefore, there is no increase in caliper from one side of the nip to another side the foam is already its desired final thickness. The reduction in ~~density~~ and ~~increase~~ in caliper of the foam occurs as the foam sheet is being formed, not after it is formed. Presumably the caliper change is measured by the difference in the ~~thickness~~ of the three layers combined before the rollers and after the rollers. At this point the foam is already a preform is adhesive is applied to it, and therefore the reduction in thickness would already have occurred as the foam does not continue expanding after it is a solid preform.

Regarding applicant's argument that Digiesi does not disclose the method steps of the invention, Andersson and Dontula et al. disclose extruding a polymer between two layers to bond them together.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., compressible foam) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read

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into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding applicant's argument that Van Handel is not prior art because the date of the provisional was misprinted, examiner agrees the dated of the provisional of Van Handel is a misprint. However, applicant has support for the heat-shrinkable film as part of the laminate only until 10/167,463, dated 6/13/02, which is after the filing date of the provisional of Van Handel. Applicant's own provisional application, dated 6/18/01 does not provide support for the concept of the heat-shrinkable film being part of the laminate. Therefore, the reference still is considered prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BJM



SAM CHUAN YAO  
PRIMARY EXAMINER